DOCKET NO.: UWY CV 13 5016462 S	:	SUPERIOR COURT
THOMAS ARRAS, ET AL	:	J. D. OF WATERBURY
V.	:	AT WATERBURY
REGIONAL SCHOOL DISTRICT #14, ET AL	:	AUGUST 19, 2014

MEMORANDUM OF DECISION ON MOTIONS FOR SUMMARY JUDGMENT

On July 30, 2014, the court heard oral argument concerning the parties' cross motions for summary judgment (##115, 176, 183). After consideration, for the reasons stated below, the plaintiffs' motion is denied and the defendants' motions are granted.

I

Background

The return date in this matter was August 20, 2013. In their revised complaint (#110) (complaint), the plaintiffs, Thomas Arras, et al, who allege that they are homeowners, taxpayers, and residents of the Town of Woodbury or the Town of Bethlehem, which are parts of Regional School District No. 14 (Region 14), allege that the defendants[1] failed to publish legal notices to warn residents concerning a June 18, 2013 referendum on the question of expending $63.8 million for renovating the Nonnewaug High School (renovations). They seek a declaration that the results of the referendum are null and void, and a permanent injunction against any funding and implementation of the resolutions approved at the referendum, including the renovations.

In its May 2, 2014 memorandum of decision (#161) on the defendants' motions to strike (##128, 130), Counts Two, Three, Four, and Six of the complaint were stricken, as were portions

[1]The defendants include Region 14, the Towns of Woodbury and Bethlehem, and various representatives thereof. For ease of reference, the court below refers to Region 14 and its representatives as the "Region 14 defendants" and to the Towns and their representatives as the "Town defendants."

of Counts One and Five. The plaintiff did not file another revised complaint. Accordingly, the pending motions for summary judgment concern the remaining portions of the complaint.

Another action, *Town of Woodbury* v. *Board of Education, Regional School District No. 14*, Docket No. LLI CV 13 6009045 S, in the Superior Court for the judicial district of Litchfield (Litchfield action), challenged the same proposed renovations. Region 14 was a defendant in that case also. In that matter, after trial, the court (*Pickard, J.*) issued a decision on December 9, 2013, declaring the results of the referendum to be valid and declaring that Region 14 and the Towns may act in reliance on the results and proceed with the building project at issue in accordance with General Statutes § 10-56. No appeal ensued, making that court's decision a final judgment in that matter.

II

Standard of Review

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law." (Internal quotation marks omitted.) *Rodriguez v. Testa*, 296 Conn. 1, 6-7, 993 A.2d 955 (2010).

"When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to

submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § [17-45]." (Internal quotation marks omitted.) *Bonington v. Westport*, 297 Conn. 297, 305, 999 A.2d 700 (2010).

"The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact." (Internal quotation marks omitted.) *Ramirez v. Health Net of the Northeast, Inc.*, 285 Conn. 1, 11, 938 A.2d 576 (2008).

III

Discussion

A

Ultra Vires

As a threshold matter, the plaintiffs argue that Judge Pickard's decision in the Litchfield action should not be considered because the Town defendants were not authorized by votes of the Towns' boards of selectmen to bring the Litchfield action, which the plaintiffs characterize as a wholly ultra vires act by the Town defendants and the Region 14 defendants, rendering the Litchfield action void ab initio.

The plaintiffs have cited no apposite authority for their argument that the judgment rendered by the Superior Court in the Litchfield action is void ab initio. See plaintiffs' objection

to defendants' motion for summary judgment (#186), pp. 4-6. The Appellate Court recently reiterated that, where a party's brief contains no case law or other authority in support of a contention, "[w]e repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned." (Internal quotation marks omitted.) *Thomas* v. *Primus*, 148 Conn. App. 28, 38, 84 A.3d 916 (2014).

Instead of providing such authority, the plaintiff cite decisions which state that acts which are beyond the scope of powers granted to a municipality are void. See *Highgate Condominium Assn.* v. *Watertown Fire District*, 210 Conn. 6, 16-17, 553 A.2d 1126 (1989) (concerning validity of sewer service charges); *Miller* v. *Eighth Utilities District*, 179 Conn. 589, 594, 427 A.2d 425 (1980) (concerning consolidation of a specially chartered municipal corporation).

The Supreme Court recently reiterated that a selectman is a town agent and "[a]s such agent he would doubtless have power to appear and prosecute or defend suits, and transact much of the formal and ordinary business of the town . . . ." (Internal quotation marks omitted.) *State* v. *Lombardo Bros. Mason Contractors, Inc.*, 307 Conn. 412, 463, 54 A.3d 1005 (2012) (quoting *Hoyle* v. *Putnam*, 46 Conn. 56, 62 (1878)). See General Statutes § 7-148 (c)(1)(A), which provides that any municipality has the power to "sue and be sued." The plaintiffs' contention that the judgment in the Litchfield action is void ab initio is unfounded.

B

Timeliness

The plaintiffs contend that the special defenses of res judicata and collateral estoppel, which the court discusses below, are not properly before the court for consideration since they were not pleaded until set forth on May 23, 2014 in Region 14's answer and special defenses (#164). No default entered against the defendants for failure to plead in a timely manner. Practice Book § 17-44 provides, in relevant part, "In any action . . . any party may move for a summary judgment as to any claim or defense as a matter of right at any time if no scheduling order exists and the case has not been assigned for trial."

The plaintiffs cite no authority which provides that the court may not consider the special defenses. In the absence of substantive discussion or citation of authorities, this argument is deemed to be abandoned. See *Thomas* v. *Primus*, supra, 148 Conn. App. 38.

In addition, at oral argument, the plaintiffs again argued that the court should not consider the defendants' objections to their motion for summary judgment. The court previously found, as stated in its June 24, 2014 ruling on plaintiffs' motion for immediate judgment and defendants' motions for judgment (#184), that the defendants did not waive or abandon their rights to oppose the plaintiffs' motion for summary judgment.

C

Res Judicata and Collateral Estoppel

The court next addresses the defendants' res judicata and collateral estoppel defenses. "The applicability of the doctrines of collateral estoppel or res judicata presents a question of

law. . . ." *Powell* v. *Infinity Ins. Co.*, 282 Conn. 594, 601, 922 A.2d 1073 (2007). "Claim preclusion (res judicata) and issue preclusion (collateral estoppel) have been described as related ideas on a continuum." (Internal quotation marks omitted) Id., 282 Conn. 600.

"[R]es judicata is based on equitable principles and concerns of judicial economy." *Sams* v. *Dept. of Environmental Protection*, 308 Conn. 359, 401 n.30, 63 A.3d 953 (2013). "The doctrine of res judicata holds that an existing final judgment rendered upon the merits without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." (Internal quotation marks omitted.) *Powell* v. *Infinity Ins. Co.*, supra, 282 Conn. 600.

"Res judicata, as a judicial doctrine . . . should be applied as necessary to promote its underlying purposes. These purposes are generally identified as being (1) to promote judicial economy by minimizing repetitive litigation; (2) to prevent inconsistent judgments which undermine the integrity of the judicial system; and (3) to provide repose by preventing a person from being [harassed] by vexatious litigation. . . . But by the same token, the internal needs of the judicial system do not outweigh its essential function in providing litigants a legal forum to redress their grievances. Courts exist for the purpose of trying lawsuits. If the courts are too busy to decide cases fairly and on the merits, something is wrong. . . . The judicial doctrines of res judicata and collateral estoppel are based on the public policy that a party should not be able to relitigate a matter which it already has had an opportunity to litigate. . . . Stability in judgments grants to parties and others the certainty in the management of their affairs which results when a controversy is finally laid to rest. The doctrines of preclusion, however, should be flexible and

must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies. . . ." (Internal quotation marks omitted.) *Bruno* v. *Geller*, 136 Conn. App. 707, 722-23, 46 A.3d 974, cert. denied, 306 Conn. 905, 52 A.3d 732 (2012).

"The doctrine of res judicata applies if the following elements are satisfied: the identity of the parties to the actions are the same; the same claim, demand or cause of action is at issue; the judgment in the first action was rendered on the merits; and the parties had an opportunity to litigate the issues fully." (Internal quotation marks omitted.) *Farmington Valley Recreational Park, Inc.* v. *Farmington Show Grounds, LLC*, 146 Conn. App. 580, 588, 79 A.3d 95 (2013).

"[C]ollateral estoppel precludes a party from relitigating issues and facts actually and necessarily determined in an earlier proceeding between the same parties or those in privity with them upon a different claim. . . ." (Internal quotation marks omitted.) *Rocco* v. *Garrison*, 268 Conn. 541, 555, 848 A.2d 352 (2010). "For an issue to be subject to collateral estoppel, it must have been fully and fairly litigated in the first action. It also must have been actually decided and the decision must have been necessary to the judgment." (Emphasis omitted; internal quotation marks omitted.) *Farmington Valley Recreational Park, Inc.* v. *Farmington Show Grounds, LLC*, supra, 146 Conn. App. 588-89.

"[T]he party asserting a defense of collateral estoppel or res judicata bears the burden of establishing its applicability." *Coyle Crete, LLC* v. *Nevins*, 137 Conn. App. 540, 548, 49 A.3d 770 (2012).

"[T]he 'difficult to define' concept of privity . . . exists to ensure that the interests of the party against whom collateral estoppel [or res judicata] is being asserted have been adequately represented because of his purported privity with a party at the initial proceeding." (Internal

quotation marks omitted.) *Commissioner of Environmental Protection* v. *Farricielli*, 307 Conn. 787, 820, 59 A.3d 789 (2013). "There is no prevailing definition of privity to be followed automatically in every case. It is not a matter of form or rigid labels; rather it is a matter of substance. In determining whether privity exists, we employ an analysis that focuses on the functional relationships of the parties. Privity is not established by the mere fact that persons may be interested in the same question or in proving or disproving the same set of facts. Rather, it is, in essence, a shorthand statement for the principle that collateral estoppel should be applied only when there exists such an identification in interest of one person with another as to represent the same legal rights so as to justify preclusion." *Mazziotti* v. *Allstate Ins. Co.*, 240 Conn. 799, 813-14, 695 A.2d 1010 (1997).

The defendants assert that the plaintiffs here, as residents and taxpayers, have the same generalized, not particularized, interest in the validity of the referendum that the Towns had in the Litchfield action, where the Towns were plaintiffs. They also argue that, although the plaintiffs declined invitations to become parties to that action, the plaintiffs actively participated in the Litchfield action by filing pleadings there, and were warned by the court of the potential preclusive effects of a judgment in the Litchfield action on the instant case.

In addition, the defendants argue that the doctrine of "virtual representation," likened to privity, is applicable here to what they characterize as a "public law suit," citing *Nolles* v. *State Comm. for Reorg. of Sch. Dists.*, 524 F.3d 892 (8th Cir.), cert. denied, 555 U.S. 945, 129 S.Ct. 418, 172 L.Ed.2d 288 (2008). There, the United States Court of Appeals was tasked with determining whether the Supreme Court of Nebraska would apply that doctrine, and concluded that the Nebraska courts would consider it. See id., 903. However, subsequently, in *Kiplinger* v. *Nebraska Dept. of Nat. Resources*, 282 Neb. 237, 249, 803 N.W.2d 28 (2011), disapproved in

part on other grounds, *Banks* v. *Heineman*, 286 Neb. 390, 837 N.W.2d 70 (2013), the Supreme Court of Nebraska stated that it "has never adopted the 'expansive definition of privity' embodied in the doctrine of virtual representation," and declined to do so on the facts and legal arguments presented. In view of the extensive Connecticut decisional law on privity and its application to res judicata and collateral estoppel, the court declines to consider the doctrine of "virtual representation."

The plaintiffs contend that those involved as parties in the Litchfield action were local government officials, who had governmental and political interests in resolving the issues there in an efficient, "friendly" lawsuit. In contrast, they assert that, as individuals and taxpayers, they have an interest in having governmental officials sanctioned for wrongdoing, so that errors can be effectively corrected and so that they will not recur.[2]

The court is mindful that equitable principles and concerns of judicial economy govern its determination as to privity. See *Sams* v. *Dept. of Environmental Protection*, supra, 308 Conn. 401 n.30. Considering the functional relationships involved, the defendants have not shown that privity is established as to the plaintiffs here, who seek redress for alleged governmental wrongdoing. Privity is not shown where the actions of governmental officials involved in the prior action as plaintiffs are the subject of the instant case on the defense side. Under these circumstances, there does not exist "such an identification in interest of one person with another as to represent the same legal rights so as to justify preclusion." *Mazziotti* v. *Allstate Ins. Co.*, supra, 240 Conn. 814. In view of this determination, the court need not consider whether the defendants have proved the other elements of res judicata or collateral estoppel.

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[2]They also argue that they decided not to join the Litchfield action since it was "ultra vires." The court addressed that contention above.

D

Count One

The plaintiffs contend that they are entitled to summary judgment as to Count One of the complaint since the defendants are statutorily liable for not arranging notice of the referendum to be published. In their motion, they cite General Statutes §§ 10-47c, 10-56, 7-9c, 9-226, and 9-369. In their memorandum (#116), page 4, Section 204 of the Woodbury Town Charter is cited.

The defendants argue that Judge Pickard's analysis in the Litchfield action, concerning the same referendum, is directly on point, and that he concluded that a failure to strictly comply with statutory notice requirements did not invalidate the results of the referendum in the absence of evidence that there were substantial statutory violations, and that, as a result of those violations, the reliability of the result is seriously in doubt.

In response, the plaintiffs do not attempt to substantively address Judge Pickard's reasoning. As discussed above, their argument that the Litchfield decision should be disregarded as "ultra vires" is unfounded. They also contend that the legislature did not permit towns or regional school boards to "substantially comply" and that, since the defendants conceded that notice requirements were not followed, an injunction should issue. See plaintiffs' objection (#186), p. 14 n.3; p. 15.

The plaintiffs' argument that concessions of wrongdoing, in not complying with statutory notice requirements, shows that the plaintiffs are entitled to prevail, is presented without citation of authorities. The court is not required to consider it. See *Thomas* v. *Primus*, supra, 148 Conn. App. 38.

Similarly unavailing is the plaintiffs' contention, raised in oral argument, that the proceedings in Litchfield should be disregarded because it was a "hostile" environment. The

argument of counsel is not evidence. "[R]epresentations of the plaintiffs' counsel are not 'evidence' and certainly not 'proof.'" *Cologne* v. *Westfarms Associates*, 197 Conn. 141, 153, 496 A.2d 476 (1985). "Statements or comments made by attorneys in the course of . . . argument are not facts in evidence, and may not properly be considered. . . ." *State* v. *Duntz*, 223 Conn. 207, 236, 613 A.2d 224 (1992).

While not binding, the court may look to a decision of the Superior Court as persuasive authority. See *Green Falls Associates, LLC* v. *Zoning Board of Appeals*, 138 Conn. App. 481, 490 n.7, 53 A.3d 273 (2012). This court finds Judge Pickard's analysis persuasive.

Based on stipulated facts, Judge Pickard comprehensively analyzed the applicable statutory scheme. There, the stipulated facts, which the plaintiffs here do not dispute, were as follows: "The defendant, Board of Education for Regional School District #14 ('Region 14'), is a regional public school district organized under Conn. Gen. Stat. 10-39 et seq. Specifically, Region 14 is a grades K-12 school district created to educate the children in the Towns of Bethlehem and Woodbury. The plaintiff, Town of Bethlehem is a municipality organized and operating pursuant to the laws of the State of Connecticut. The plaintiff, Town of Woodbury is a municipality organized and operating under the laws of the State of Connecticut. The Towns of Bethlehem and Woodbury are the towns that comprise Region 14. Region 14 was established by way of a majority vote in each of the Towns on May 20, 1968 to regionalize their schools and establish a regional school district, with schools located in the Towns of Bethlehem and Woodbury, for the purpose of providing the necessary facilities and administering grades Kindergarten through 12 in said schools. Region 14's Board of Education was established in 1969. Among the schools operated by Region 14 is Nonnewaug High School in Woodbury.

'At a duly noticed special meeting convened on May 16, 2013, following a duly noticed and warned public hearing/district meeting, the defendant Board of Education voted in favor of a resolution appropriating $63,820,605 for the renovation of and additions to the Nonnewaug High School, and authorizing the issuance of bonds and notes in the same amount to finance this appropriation. By way of further resolution, the Board of Education recommended to the Towns within Region 14 that the aforesaid bond and not[e] authorization be approved by referendum vote, with said referendum to be held in each of the Towns on June 18, 2013. The Board of Education voted at said meeting to place on the referendum ballot the following question: 'Shall Regional School District Number 14 appropriate $63,820,605 for renovation of and additions to Nonnewaug High School, and authorize the issue of bonds and notes in the same amount to finance the appropriation?'

'On May 19, 2013, via e-mail, the defendant notified the Town Clerks of the Towns of Woodbury and Bethlehem that the defendant's Board of Education had approved the ballot question and date of the building referendum. The defendant forwarded the draft minutes reflecting their actions, including the afore-mentioned resolutions approved by the Board of Education, along with a copy of the referendum question to be placed on the ballot. The Town Clerks did not arrange for notice of the referendum to be published in a newspaper of general circulation in the Town of Bethlehem and Woodbury.

'The Registrar of Voters of the Town of Woodbury submitted a document to the media with the following heading: 'Notice-News Release-For Immediate Release-Reminder-Please Publish ASAP-Thank You.' After receipt of this document from the Regist[rar], *Voices*, which is a newspaper that has a general circulation in the Towns of Bethlehem and Woodbury, published in its June 12, 2013 edition an article setting forth: a) the question to be voted upon, b) the

polling locations in both Towns, and c) the time and the date of the referendum, as requested by the Regist[rar]. The article further indicated who were eligible voters, and contact information for both the Town Clerks and Registrars of Voters in both Towns. The above-mentioned was *not* placed by *Voices* in its 'legal notice' [section].

'The circulation of *Voices* in the Town of Bethlehem is 1,360; in the Town of Woodbury, it is 3,338. The circulation of the daily edition of the *Waterbury Republican-American* in the Town of Bethlehem is 402; in the Town of Woodbury, it is 1,062.

'The referendum did garner additional publicity via various means. Examples of the publicity given to the referendum were the following: In the *Waterbury Republican American*, there were numerous articles concerning the referendum. In *Voices*, there were numerous articles concerning the referendum. Notice of the date, time and question to be voted on with regard to the referendum was posted on the defendant's website. Prior to the referendum, the defendant sent to every resident in the Towns via the mail notice of the upcoming referendum. The defendant utilized its 'Alert Now' robo-calling system to contact District parents/voters and notify them of the date, time, and places to vote with regard to the referendum.

'Other examples of publicity and attempts to publicize in the community include but are not limited to the following: publicized tours of the high school building (with bussing provided for residents wishing to take the tour), discussions of and presentation on the project/referendum at town board meetings and senior centers, a public hearing on the project immediately preceding the special meeting that set the referendum date on May 16, 2013, and prominent signage, including hand-held signs and banners. On June 18, 2013, the referendum question passed by a vote of 1,269 to 1,265. The defendant has conducted numerous referenda in the same (late spring) time period over the last 3 years. On May 7, 2013, a referendum (which was 'legally

noticed') on the District's budget passed by a vote of 1250 to 1152. On June 26, 2012, a referendum (which was 'legally noticed') on the District's budget was passed by a vote of 1,105 to 1,027. On June 6, 2012, a referendum (which was 'legally noticed') on the District's budget was rejected by a vote of 1,210 to 843. On May 8, 2012, a referendum (which was 'legally noticed') on the District's budget was rejected by a vote of 1,203 to 836. On June 6, 2011, a referendum (which was 'legally noticed') on the district's budget was passed by a vote of 1,080 to 1,010. On May 18, 2011, a referendum (which was 'legally noticed') on the District's budget was rejected by a vote of 1,100 to 1,075. On May 4, 2011, a referendum (which was 'legally noticed') on the District's budget was rejected by a vote of 1,289 to 1,036." (Emphasis in original.)

The Litchfield court also cited relevant statutes, on which the plaintiffs here rely: "Connecticut General Statutes 10-47c provides that a regional board of education shall set the date for referenda, which shall be held simultaneously in each member town. . . . At least thirty days before the date of the referenda, the regional board of education shall notify the town clerk in each member town to call the referendum on the specified date to vote on the specified question. . . . '[T]he warning of such referenda shall be published, the vote taken and the results thereof canvassed and declared in the same manner as is provided for the election of officers of a town.'

'General Statutes § 9-226 sets for[th] the requirements for warning a town election: ['t]he warning of each municipal election shall specify the objects for which such election is to be held. Notice of a town election shall be given by the town clerk or assistant town clerk, by publishing a warning in a newspaper published in such town or having a general circulation therein, such publication to be not more than fifteen, nor less than five days previous to holding the election.

The town clerk in each town shall, in the warning for such election, give notice of the time and the location of the polling place in the town and, in towns divided into voting districts, of the time and the location of the polling place in each district. The town clerk shall record each such warning.'[3]

After review, the Litchfield court concluded that "Connecticut's case law is devoid of cases addressing the need for strict compliance with the publication of notice requirement contained in General Statutes 9-226. . . . [T]he court finds that the failure to strictly comply with the requirement that notice of a town election be given 'by publishing a warning in a newspaper,' alone, is insufficient to invalidate referendum results. Rather, in order to invalidate referendum results based on a failure to publish a formal 'warning' in a newspaper, the challenging party must establish actual prejudice from the error that affected the outcome of the vote."

In particular, the Litchfield court cited, as applicable guidance, *Caruso* v. *Bridgeport*, 285 Conn. 618, 941 A.2d 226 (2008), where the Supreme Court stated that "[w]e look . . . first and foremost to the election officials to manage the election process so that the will of the people is carried out . . . . Moreover, [t]he delicacy of judicial intrusion into the electoral process . . .

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[3]Similarly, General Statutes § 7-9c provides, in relevant part, that the municipal clerk, upon instruction from the legislative body, is to issue "a warning therefor by publishing a notice thereof in a newspaper having a general circulation in the municipality." Also, Section 204 B of the Woodbury Town Charter provides that a Notice is to be published in a newspaper having circulation in the Town.

Also, General Statutes § 9-369 provides, in relevant part, that municipal elections "shall be warned and held, the vote on such amendment, question or proposal cast and canvassed and the result determined and certified as nearly as may be in accordance with the provisions governing the election of officers in the state or in such municipality. The warning for such election shall state that a purpose of such election is to vote for the approval or disapproval of such amendment, question or proposal and shall state the section of the Constitution or of the general statutes or the special act under authority of which such vote is taken."

strongly suggests caution in undertaking such an intrusion . . . Finally, we have recognized that voters have a powerful interest in the stability of [an] election because the ordering of a new and different election would result in *their* election day disfranchisement . . . [This] background counsels strongly that a court should be very cautious before exercising its power under the [statutes governing election contests] to vacate the results of an election and to order a new election." (Citations omitted; emphasis in original; internal quotation marks omitted.) Id., 637-38.

Accordingly, one challenging election results must prove that "(1) there were *substantial* violations of the requirements of the statute . . . and (2) as a result of those violations, the reliability of the result of the election is *seriously in doubt.*" (Emphasis in original; internal quotation marks omitted.) Id., 649. The Litchfield court's decision also cited other cases, including decisions from other jurisdictions, which provided support for its determination.

Concerning the referendum at issue here, the Litchfield court found "there is no evidence that the failure to strictly comply with the notice requirement, by publishing an official 'warning' in the newspapers, was substantial or caused the results of the referendum to be seriously in doubt. On the contrary, the evidence shows that, although a notice was not published in the legal notice section of *Voices*, an article, based on a news release from the Woodbury registrar of voters, was published in *Voices'* June 12, 2013 edition. This article set forth the question to be voted upon, the polling locations, and the time and date of the referendum. The article further indicated who was eligible to vote and the contact information for the town clerks and registrars of voters in both towns. Furthermore, the evidence indicates that the referendum garnered additional publicity in *Voices* and the *Waterbury Republican-American*, which published numerous articles concerning the referendum.

'Moreover, notice of the date, time, location and referendum question was posted on the defendant's website, the defendant used its robo-calling system to contact parents and voters to notify them of this information and the defendant mailed every resident in both towns a notice concerning the referendum. Additionally, in an endeavor to bring to the attention of the voters of the project and referendum, there were publicized tours of the high school building, discussions of and presentations on the referendum/project at town board meetings and senior centers, a public hearing on the project immediately preceding the special meeting that set the referendum date, and prominent signage, including hand-held signs and banners.

'Thus, so far as advising the voters was concerned, publishing the 'warning' in the legal notices section of the newspaper would have been merely nominal in comparison with what was actually done to inform the town residents about the referendum that they were to vote upon. Indeed, it is apparent from the record that the referendum had a greater turnout than those past referenda that took place with proper notice. This indicates that the towns' electorates were well advised of the referendum and it resulted in a full and fair expression of their will. In the present case . . . [n]o inference may be drawn from the record that a single vote was lost or affected by failure to publish a notice in strict compliance with the statute. It is, instead, clearly inferable that the publicity actually brought to bear on the issue was [far] greater than would have been afforded by strict compliance alone." (Citation omitted; internal quotation marks omitted.) *Town of Woodbury* v. *Board of Education, Regional School District No. 14*, supra, Docket No. LLI CV 13 6009045.

Accordingly, the Litchfield court entered a declaratory judgment finding that there had been substantial compliance with General Statutes §§ 9-226, 10-47c, and 10-56,[4] that the results were valid, and that Region 14 and the Towns may act in reliance thereon and proceed with the building project at issue. A writ of mandamus issued, ordering the Towns' Clerks to certify the vote as required by § 10-47c. See id.

In view of *Caruso* v. *Bridgeport*, supra, 285 Conn. 618, and other recent authority cited in the Litchfield decision, the plaintiffs' reliance on *State ex rel Coogan* v. *Barbour*, 53 Conn. 76, 22 A. 686 (1885), is misplaced. That decision involved a ballot taken by the City of Hartford common council in joint convention, not a referendum or election.

The plaintiffs here have not provided a persuasive reason for this court to depart from the Litchfield court's thoughtful decision. They have not shown that there were substantial violations of the requirements of the statutes and, that, as a result of those violations, the reliability of the result of the referendum is seriously in doubt. See *Caruso* v. *Bridgeport*, supra, 285 Conn. 649.[5] The plaintiffs have not shown that municipal error resulted in actual prejudice that affected the outcome of the vote.[6]

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[4]Section 10-56 provides, in relevant part, that a regional school district "may issue bonds, notes or other obligations in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum. Such referendum shall be conducted in accordance with the procedure provided in section 10-47c except that any person entitled to vote under section 7-6 may vote and the question shall be determined by the majority of those persons voting in the regional school district as a whole."

[5]Accordingly, their citations of General Statutes §§ 9-350 (concerning fine for failing to warn an election), 9-355 (concerning penalties for official neglect or fraud); and 1-25 (concerning forms of oaths) are unavailing.

[6]For example, plaintiffs Exhibit J, an email message from an individual, notes that the sender voted but spoke with unnamed friends who were unaware of the vote. This hearsay

In addition, the plaintiffs' reliance on *State* v. *Lenarz*, 301 Conn. 417, 22 A.3d 538 (2011), is misplaced. There, the Supreme Court addressed the right to counsel under the Sixth Amendment to the United States Constitution and presumptive prejudice. Here, the plaintiffs' constitutional claims were stricken.

In addition to the statutes discussed above, the plaintiffs argue that other statutes listed in Count One were violated. In view of the lack of evidence of substantial violations of the statutes concerning referenda, and the lack of evidence that the reliability of the result is seriously in doubt, discussed above, no municipal liability for negligence under General Statutes § 52-557n (a) (1)[7] has been shown. Similarly, if there is no employee liability, there is no municipal liability under General Statutes § 7-465, which concerns assumption of liability for damages caused by municipal employees.[8] "A claim for indemnification under § 7-465 is entirely dependent upon establishing liability against a municipal employee." *Bonington* v. *Westport*, supra, 297 Conn. 316.

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statement provides no evidence that the reliability of the result of the referendum is seriously in doubt.

[7]Section 52-557n (a) (1) provides, in relevant part, "Except as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer, or agent thereof acting within the scope of his empoloyment or official duties. . . ."

[8]Section 7-465 (a), provides, in relevant part, "Any town, city or borough, notwithstanding any inconsistent provision of law, general, special or local, shall pay on behalf of any employee of such municipality . . . all sums which such employee becomes obligated to pay by reason of the liability imposed upon such employee by law for damages awarded for infringement of any person's civil rights or for physical damages to person or property, except as set forth in this section, if the employee, at the time of the occurrence, accident, physical injury or damages complained of, was acting in the performance of his duties and within the scope of his employment, and if such occurrence, accident, physical injury or damage was not the result of any wilful or wanton act of such employee in the discharge of such duty."

E

Counts Five and Seven

In the court's memorandum of decision on the defendants' motion to strike (#161), the plaintiffs' constitutional claims were stricken. Plaintiffs' remaining claims in Count Five for municipal liability under General Statutes § 7-465 are based on the statutory notice requirements discussed above. As discussed above, there is no municipal liability shown under § 7-465.

In Count Seven, the plaintiffs seek injunctive relief based on the claims asserted in previous counts, not on a separate legal theory. Since the plaintiffs have not prevailed on their claims, they are not entitled to injunctive relief.

In view of the court's rulings as to issues discussed above, the court need not consider the defendants' other arguments, as to whether General Statutes §§ 9-7b and 9-371b provide the sole remedies for a voter contesting a referendum, and as to governmental immunity and § 52-557n (a) (2) (B) and (b) (5).

CONCLUSION

Based on the foregoing reasons, the plaintiffs' motion for summary judgment is denied and the defendants' motions for summary judgment are granted. Judgment may enter for the defendants. It is so ordered.

BY THE COURT

Robert B. Shapiro

ROBERT B. SHAPIRO
JUDGE OF THE SUPERIOR COURT

Copies mailed on 8/19/14 to:
✓ Atty. Deborah G. Stevenson
✓ Pullman & Comley, LLC
✓ Slavin, Stauffacher & Scott LLC
✓ Quion & Stevens
✓ Reporter of Judicial Decisions
by _____ Deputy Chief Clerk